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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1970

No. 1690

HALLMARK INDUSTRY, *Petitioner,*

vs.

HONORABLE ROBERT F. PECKHAM, Judge of the United States District Court for the Northern District of California,
Respondent,
And
REYNOLDS METALS COMPANY, and
STANRAY PACIFIC CORPORATION,
Real Parties in Interest.

REPLY BRIEF OF HALLMARK INDUSTRY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

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PRELIMINARY STATEMENT

In their brief in opposition to the petition for Writ of Certiorari herein, the Real Parties in Interest ("RPI") Reynolds Metals Company ("Reynolds") and Stanray Pacific Corporation ("Stanray") misstate and oversimplify the relevant facts and proceedings which occurred in the

District Court below. For example, in stating the "Question Presented" (RPI brief, p. 3) it is asserted that in filing the jury verdict, the clerk ". . . simply noted in the docket 'Filed jury verdict' . . ."

In fact, upon receiving the verdict, and the District Court's direction that it be entered—in the context of the Court's statement that "The judgment has been entered as of today".—(1) the clerk forthwith "prepared" that document by a handwritten notation thereon which stated: "Filed, Wednesday, June 24, 1970"; (2) the clerk then signed the form; and (3) he then made an entry in the civil docket which went far beyond a "simple" notation of the filing of the verdict, for it recited the entire text and substance of the verdict, and which—on its face—specified all details of the judgment including the nature of the case, the parties, and the amount of damages, and resolved all doubt as to the nature and effect of the determination. (See Appendices A and D, Petition for Writ of Certiorari.)

The brief of the Real Parties in Interest ignores the fact that the subsequent document which was designated as "judgment" filed on June 29, 1970 and the content of the docket entry of that date utterly fail to add anything of substance (other than the word "judgment") to the document and entry of June 24. (See Appendix D, Petition for Writ of Certiorari.)

In their Statement of the Case (brief, p. 4) Reynolds and Stanray attempt to deny what the record below establishes beyond question. They assert that the language of the District Court reflected merely an ". . . expectation that judgment would be entered that same day." In

fact, the Court stated: "The judgment *has been* entered *as of today.* So the *10 days will start running today.*" (Emphasis added.) (Appendix D, p. 8, Petition for Writ of Certiorari.)

RPI's assertion (brief, p. 4) that "However, no judgment, in fact was filed or entered that day." is merely an assumption concerning the ultimate issue before this Court. That assumption, in the light of the clear language of the District Court below, the open court acknowledgment by the defendants and the clerk, and the clerk's actions is totally unsupported by the record.

Finally, counsel for Reynolds and Stanray deny that they understood and had notice that judgment was entered on June 24. (footnote, brief, p. 4.) Their self-serving denial is clearly contradicted by the record itself. They most assuredly heard the Judge read Rule 50(b) with its ten day limitation. (Tr. 3962-3963.) They heard him state that judgment was entered "as of today" and that the 10 day period would "start running today." (Tr. 3964.) Counsel for RPI made numerous references to the 10 day period and admitted that failure to file motions within 10 days was jurisdictionally fatal. (Tr. 3961, 3966.) Contrary to RPI's assertions, it was unequivocally clear that the Court and all the parties were measuring the 10 day period from June 24—not June 29—by the Clerk's statement: "Your Honor, the 10th day would fall on Saturday July 4th". (Tr. 3965.) Mr. Hauser, counsel for Reynolds, subsequently recognized that the 10 day period was "jurisdictional" (Tr. 3966.) (All transcript references are set forth in Appendix B, Petition for Writ of Certiorari.)

RPI's brief also ignores the importance of the June 24th discussion and setting of a hearing date for the post-judgment motions. On that date, the District Court set a specific date of July 22, 1970 at 10 a.m. ". . . for hearing on all motions." (Appendix D at p. 14, Petition for Writ of Certiorari.) This again demonstrates the finality of the proceedings as of June 24, 1970. It is inconceivable that the Court would have ordered and set a hearing date for post-judgment motions unless it was clear that judgment had already been entered.

ARGUMENT

In light of the clear and indisputable facts set forth above (and in more detail in the Petition previously filed herein) there can be no doubt that the judgment in the District Court below was entered on June 24, 1970, not June 29, 1970, and hence that Court was without jurisdiction to grant judgment notwithstanding the verdict or a new trial on motions which were not timely filed. Many of the arguments made by Reynolds and Stanray in their brief are attempts to confuse the relatively simple issue here involved. Petitioner will respond *seriatim*.

I. THE RECENT AMENDMENTS TO RULES 50 AND 58 OF THE FEDERAL RULES OF CIVIL PROCEDURE DO NOT ALTER THE FACT THAT JUDGMENT BELOW WAS ENTERED ON JUNE 24 NOT JUNE 29.

The RPI argue (brief, p. 6) that petitioner's view of the proceedings below ". . . of necessity rests on the theory that verdict and judgment are identical in federal

jury trials." They then discuss the amendment to F.R. Civ. P. 50 which provides that motions for judgment notwithstanding the verdict be filed within 10 days after entry of judgment.

The RPI misstate the case. Petitioner does not contend that in federal jury trials the verdict is the judgment. However, nothing in the amendment to Rule 50(b) indicates that judgment on the verdict cannot be entered on the same day the verdict is returned. That is precisely what occurred in our present case. After a long and arduous eight week trial and six days of deliberation, the jury brought in its verdict and the District Court ordered immediate entry of judgment. All parties were aware that judgment had been entered, and the clerk forthwith complied with the requirements of Rule 58 in preparing, signing and entering that judgment.

Counsel for RPI make much of the provision in Rule 58 that every judgment ". . . shall be set forth on a separate document." They grudgingly concede, however, by their citation of authority, that the quoted provision was primarily intended to distinguish "judgments" from memoranda and opinions of a trial court. (Brief, pp. 8, 13.) They also concede (p. 18) that Rule 58 does not require that the judgment be set forth on a separate document designated "judgment."

In fact the separate document provision was intended to resolve any uncertainty that judgment had been entered. So long as the document filed meets that criteria, the judgment is indeed entered.

In our case, the language of the Court, Clerk and parties clearly reflected the intent and understanding that

judgment was pronounced as of June 24, 1966 immediately after the jury brought in its verdict. The action of the clerk in further preparing, signing and entering that form satisfied Rule 58. All parties had notice of the entry of judgment on June 24th, and were specifically and expressly informed that the ten day period for filing of the motions here in issue had started to run as of that date. Finally, the Clerk's separate entry in the civil docket of the substance of the verdict and judgment constituted a complete and unambiguous determination of the rights and liabilities of all the parties. It is also clear that nothing was left open or undone; no subsequent action by the Court was intended or implied. Thus, on June 24th, everything being completed, a hearing date was set for argument on the post-judgment motions. The subsequent "judgment" form and docket entry added nothing to the previous document and entry but the superfluous word "judgment."

Therefore, according to the record in our case, the verdict was returned and the judgment was entered on the same day, June 24, 1970. The motions for judgment notwithstanding the verdict and new trial, filed 15 days later, were not timely. The District Court's ruling granting those motions was thus beyond its jurisdiction and a clear abuse of discretion.

II. THE ACTION BELOW IS IN CONFLICT WITH THE DECISIONS OF THIS COURT AND COURTS OF APPEALS IN OTHER CIRCUITS.

In criticizing petitioner's analysis of this Court's decision in *United States v. F & M Schaefer Brewing Co.*, 356 U.S. 227 (1958), counsel for RPI contradict themselves by quoting language from that case which establishes that the *Schaefer* ruling concerning the date of entry of judgment is based on the intent of the Court and parties. (Brief, footnote, pp. 10-11.) The decision by this Court was that an opinion of a District Court was not a judgment because the actions of all concerned (judge and counsel) ". . . clearly show that none of them understood the opinion to be the judge's final act or to constitute his final judgment in the case." (356 U.S. at 235-236.)

As established above, the intention and understanding of all concerned in our case—as expressed on the record June 24, 1970—was otherwise: the action herein was understood to be the judge's final act and to constitute his final judgment in the case. Indeed, it would be impossible to imagine a more clear statement of the intent of the Court and the understanding of counsel.

Reynolds and Stanray then argue (brief, pp. 12-13) that *Schaefer* antedates the amendment to Rule 58. They refuse to see, as has been established above, that the requirements of Rule 58 were met in our case. Instead they reveal their true theory suggesting that a judgment cannot be a judgment unless it is designated as such. No more blatant call for "form over substance" could be imagined.

In urging that the ruling below is not in conflict with decisions in other circuits, Reynolds and Stanray seek to distinguish our case because it involves a verdict whereas the others involved orders of a trial judge. It is clear from RPI's cited authority (brief, pp. 8, 13) that the so-called "separate document" requirement was primarily addressed to the problem of distinguishing "judgments" from lesser orders and opinions of the trial court. The requirement, then, cannot and must not be more rigidly applied to judgments upon jury verdicts.

As Reynolds and Stanray admit (footnote, brief p. 15) in *Weedon v. Gaden,* 419 F.2d 303 (D.C. Cir. 1969) the District Court had issued an order which the Clerk then signed and entered. The Court of Appeals ruled that such constituted entry of judgment under Rule 58.

The action of the Court below is in direct conflict with *Weedon.* Indeed, the proceedings in the District Court below even more clearly satisfy the dictates of Rule 58 than did those in *Weedon.* Moreover, our case is more compelling because it implicitly extends the time for filing motions under 50(b) which, by definition, are in derogation of a jury verdict. Rule 58 commands the Clerk to enter judgment "forthwith", not a week or month or year after the Court has pronounced that judgment.

In our case the Clerk followed the mandate for speed by preparing, signing, filing and thus *immediately entering* the form upon which the full substance of the judgment was set forth. This was done on the same day that the jury verdict was returned and the judgment was announced.

The ruling below waters down the constitutional commitment to trial by jury by extending the time for filing motions attacking judgments entered upon jury verdicts. In so doing, the ruling below erodes the certainty and finality of such judgments and thereby contributes to a policy which, of necessity, prolongs protracted litigation of the type here involved.

The ruling below, therefore, is in conflict with prior decisions of this Court and Courts of Appeals in other circuits. It also raises important questions concerning the orderly administration of justice in federal jury trials which can be resolved only through review and a decision by this Court.

CONCLUSION

For all of the reasons stated above as more fully set *forth in the petition previously filed herein, Hallmark* Industry's Petition for Writ of Certiorari to the Ninth Circuit Court of Appeals should be granted.

Dated, June 15, 1971.

Respectfully submitted,

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